

Maine Revised Statutes
Title 24-A: MAINE INSURANCE CODE
Chapter 9: KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

§731-B. CREDIT FOR REINSURANCE

1. Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurance is ceded to a solvent assuming insurer that:

A. Is licensed to transact insurance or reinsurance in this State, provided the assuming insurer maintains surplus as regards policyholders in an amount not less than the sum of paid-in capital stock, if any, and surplus as otherwise required for a certificate of authority for the kinds and amount of insurance and assumed reinsurance the insurer has in force net of any applicable ceded reinsurance. If the assuming insurer is licensed as a special purpose reinsurance vehicle pursuant to section 782 and maintains capital and surplus in accordance with the requirements of section 787, credit for reinsurance under a special purpose reinsurance vehicle contract, as defined in section 781, subsection 15, is allowed only to the extent that:

- (1) The fair value of the assets held by or for the benefit of the ceding insurer equals or exceeds the obligations due and payable to the ceding insurer by the special purpose reinsurance vehicle under the special purpose reinsurance vehicle contract;
- (2) The assets are held in accordance with the requirements in subchapter 6;
- (3) The assets are administered in the manner and pursuant to arrangements under subchapter 6;
- (4) The assets are held or invested in one or more of the forms allowed in section 795; and
- (5) The contract complies with all other relevant requirements of subchapter 6; [2007 , c . 386 , §1 (AMD) .]

B. Is domiciled and licensed in a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section, if the insurer:

- (1) Submits to the authority of this State to examine its books and records; and
- (2) Except where reinsurance is ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system, maintains a surplus regarding policyholders in an amount not less than \$20,000,000; [1991 , c . 828 , §16 (AMD) .]

B-1. Is accredited as a reinsurer in this State, in accordance with the following standards.

- (1) To apply for accreditation, a reinsurer shall file with the superintendent a written application on a form prescribed by the superintendent, accompanied by the fee prescribed in section 601, subsection 26 and an agreement to submit to the jurisdiction of the courts of this State and to the authority of the superintendent to examine the reinsurer's books and records.
- (2) An accredited reinsurer must be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien reinsurer, that reinsurer must be entered through and licensed to transact insurance or reinsurance in at least one state.
- (3) An accredited reinsurer shall file with the superintendent, as part of its application and annually thereafter, a copy of its annual statement filed with the insurance department of its state of domicile or United States port of entry and a copy of its most recent audited financial statement.
- (4) A reinsurer applying for accreditation that maintains a surplus as regards to policyholders in an amount not less than \$20,000,000 is deemed to be accredited if the reinsurer's application is not denied by the superintendent within 90 days after submission of the application. The superintendent

has the discretion to grant accreditation to an applicant with a surplus less than \$20,000,000 subject to such terms and conditions as the superintendent determines to be necessary and appropriate for the protection of domestic ceding insurers and their policyholders. [2013, c. 238, Pt. B, § 3 (AMD) .]

B-2. Is certified as a reinsurer in this State and secures its obligations in accordance with this paragraph.

(1) To be eligible for certification, the assuming insurer must meet the following requirements:

- (a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a jurisdiction determined by the superintendent to be a qualified jurisdiction pursuant to subparagraph (3);
- (b) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the superintendent pursuant to rules adopted under subsection 7;
- (c) The assuming insurer must maintain financial strength ratings from 2 or more rating agencies determined by the superintendent to be acceptable pursuant to rules adopted under subsection 7;
- (d) The assuming insurer must agree to submit to the jurisdiction of this State and to appoint an agent for service of process in the same manner as provided for authorized insurers under section 421 and agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment;
- (e) The assuming insurer must agree to meet applicable information filing requirements as determined by the superintendent, both with respect to an initial application for certification and on an ongoing basis;
- (f) The assuming insurer must pay the application fee prescribed in section 601, subsection 26-A and, to the extent provided in rules adopted under subsection 7, must agree to pay reasonable costs of review; and
- (g) The assuming insurer must satisfy any other requirements for certification established by the superintendent.

(2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subparagraph (1):

- (a) The association may satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which must include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the superintendent to provide adequate protection;
- (b) The incorporated members of the association may not be engaged in any business other than underwriting as a member of the association and must be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
- (c) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the superintendent an annual certification by the association's domiciliary regulator of the solvency of each underwriter member of the association or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(3) The superintendent shall create and publish a list of jurisdictions that are qualified to serve as the domiciliary regulators of certified reinsurers.

(a) In order to determine whether the domiciliary jurisdiction of an alien assuming insurer is eligible to be recognized as a qualified jurisdiction, the superintendent shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States. To be recognized as qualified, a jurisdiction must agree to share information and cooperate with the superintendent with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the superintendent has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. The superintendent may consider additional factors.

(b) If the National Association of Insurance Commissioners has published a list of recommended qualified jurisdictions, the superintendent shall consider that list in determining qualified jurisdictions. If the superintendent recognizes a jurisdiction as qualified that does not appear on the list published by the National Association of Insurance Commissioners, the superintendent shall make detailed findings of fact supporting the recognition in accordance with criteria to be developed in rules adopted under subsection 7.

(c) United States jurisdictions that are accredited by the National Association of Insurance Commissioners must be recognized as qualified jurisdictions.

(d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the superintendent may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(4) The superintendent shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies determined to be acceptable pursuant to rules adopted under subsection 7. The superintendent shall publish a list of all certified reinsurers and their ratings.

(5) A certified reinsurer shall secure all obligations assumed from United States ceding insurers under this subsection, and under comparable laws of other states, at a level consistent with its rating and in a form acceptable to the superintendent, in compliance with rules adopted under subsection 7.

(a) If the security is insufficient, the superintendent shall reduce the allowable credit by an amount proportionate to the deficiency and may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(b) The reinsurer may secure its obligations as a certified reinsurer through a multibeneficiary trust that meets the requirements of paragraph C and subsection 2-A, with the following modifications.

(i) The maximum credit allowable may exceed the value of the qualifying security to the extent provided in this subparagraph.

(ii) The minimum trusted surplus is \$10,000,000, rather than the amount specified in paragraph C.

(iii) If the certified reinsurer also maintains a multibeneficiary trust for obligations required to be fully secured under paragraph C or comparable laws of other states, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations that are required to be fully secured. The trust accounts may not be approved as qualifying security unless the reinsurer has bound itself, by the language of the trust and by agreement with the insurance regulator with principal oversight of each such trust account, to apply, upon termination of any such trust account, the remaining surplus of that trust to the extent necessary to fund any deficiency of any other such trust account.

(c) If a certified reinsurer does not secure its obligations through a qualifying multibeneficiary trust, it must secure its obligations to the ceding insurer consistent with the requirements of subsection 3, except that the maximum credit allowable may exceed the value of the qualifying security to the extent provided in this subparagraph.

(d) For purposes of this subparagraph, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations, unless the superintendent has continued to assign a higher rating, as permitted by other provisions of this section, to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(6) If an applicant for certification has been certified as a reinsurer in a jurisdiction accredited by the National Association of Insurance Commissioners, the superintendent may defer to that jurisdiction's certification to grant certification in this State and may defer to the rating assigned by that jurisdiction.

(7) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the superintendent shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business. [2013, c. 238, Pt. B, §4 (NEW).]

C. Maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest.

(1) The assuming insurer shall report annually to the superintendent information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the superintendent to determine the sufficiency of the trust fund.

(2) In the case of a single assuming insurer, the trust must consist of a trustee account representing the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, unless the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, must include a trustee surplus of at least \$20,000,000. The trust must provide that after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the insurance regulator with principal oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and must consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(3-A) A group including incorporated and individual unincorporated underwriters may secure its obligations with funds held in trust in compliance with the following standards.

(a) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, the trust must consist of a trustee account in an amount at least equal to the respective underwriters' several liabilities attributable to reinsurance ceded by United States domiciled ceding insurers to any underwriter that is a member of the group.

(b) Notwithstanding the other provisions of this section, for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992 and not amended or renewed after that date, the trust must consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(c) In addition, the group shall maintain a trusteed surplus of at least \$100,000,000 held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

An incorporated member of the group may not be engaged in any business other than underwriting as a member of the group and is subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the superintendent an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group or, if a certification is unavailable, financial statements prepared by independent public accountants.

(4-A) The superintendent in rules adopted pursuant to subsection 7 may establish alternative criteria for approval of a reinsurance trust if the superintendent determines that the criteria provide adequate protection to policyholders of United States ceding insurers and are in substantial conformance with standards approved by the National Association of Insurance Commissioners.

(5) The trust must be established in a form approved by the superintendent and consistent with any rules adopted by the superintendent pursuant to this section. The form of the trust and any amendments to the trust must also have been approved by the insurance regulatory official of the state where the trust is domiciled or of another state that, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer are subject to examination, as determined by the superintendent, at the assuming insurer's expense. The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(6) The trustees of the trust shall report to the superintendent in writing by February 28th of each year, setting forth the balance of the trust and listing the trust's investments at the end of the preceding year and certifying the date of termination of the trust, if so planned, or certifying that the trust does not expire before December 31st of the current year.

(7) The corpus of the trust is to be valued as any other admitted asset or assets; [2013 , c . 238 , Pt . B , §5 (AMD) .]

D. Does not meet the requirements of paragraph A, B, B-1, B-2 or C, but only with respect to risks located in a jurisdiction where that reinsurance is required by law. The superintendent for good cause after notice and opportunity for hearing may disallow or reduce the credit otherwise permitted under this paragraph. [2013 , c . 238 , Pt . B , §6 (AMD) .]

[2013 , c . 238 , Pt . B , §§3-6 (AMD) .]

1-A. The superintendent may suspend or revoke a reinsurer's accreditation or certification under subsection 1, after notice and opportunity for hearing, for failure to meet the applicable requirements of subsection 1 or on any ground that would warrant similar action against the certificate of authority of an authorized insurer.

A. A suspension or revocation under this subsection may not take effect until after the superintendent's order following a hearing, unless:

- (1) The reinsurer waives its right to a hearing;
- (2) The superintendent's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection 1, paragraph B-2, subparagraph (6); or
- (3) The superintendent finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the superintendent's action. [2013, c. 238, Pt. B, §7 (NEW) .]

B. While a reinsurer's accreditation or certification is suspended pursuant to this subsection, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit under subsection 1 except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection 3. If a reinsurer's accreditation or certification is revoked pursuant to this subsection, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection 1, paragraph B-2, subparagraph (5) or subsection 3. [2013, c. 238, Pt. B, §7 (NEW) .]

C. The superintendent may deny an application for accreditation or certification under subsection 1, or may impose conditions or restrictions on a reinsurer's accreditation or certification, on any ground for which accreditation or certification may be suspended or revoked. [2013, c. 238, Pt. B, §7 (NEW) .]

[2013, c. 238, Pt. B, §7 (NEW) .]

2. The credit permitted by subsection 1 is not to be allowed unless the assuming insurer agrees in the reinsurance agreements:

A. That, if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer:

- (1) Will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;
- (2) Will comply with all requirements necessary to give the court jurisdiction; and
- (3) Will abide by the final decision of the court or of any Appellate Court in the event of an appeal; and [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF) .]

B. To designate the superintendent or an attorney as its attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company, as required in section 421. [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF) .]

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

[1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF) .]

2-A. Credit for reinsurance may not be allowed on the basis of a trust maintained pursuant to subsection 1, paragraph C unless the assuming insurer agrees in the trust agreements to the following conditions.

A. Notwithstanding any other provisions in the trust instrument, if the trust fund contains an amount less than the amount required by this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory

oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund. [2001, c. 47, §5 (NEW) .]

B. The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies. [2001, c. 47, §5 (NEW) .]

C. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part of the assets of the trust fund are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part of the assets of the trust fund must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement. [2001, c. 47, §5 (NEW) .]

D. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection. [2001, c. 47, §5 (NEW) .]

[2001, c. 47, §5 (NEW) .]

3. An asset or a reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of subsection 1 is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must equal the value of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the contract, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

A. Cash; [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF) .]

B. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those designated as exempt from filing in the purposes and procedures manual of the Securities Valuation Office, and qualifying as admitted assets; or [2013, c. 238, Pt. B, §8 (AMD) .]

C. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution no later than December 31st of the year for which filing is being made and in the possession of the ceding company on or before the filing date of its annual statement.

(1) A letter of credit from an issuer determined to be acceptable as of the date of issuance or the date of confirmation of the letter, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continues to be acceptable as security until its expiration, extension, renewal, modification or amendment, whichever first occurs. The ceding insurer shall replace a nonqualifying letter of credit at its earliest opportunity.

(2) The letter of credit must indicate that it is not subject to any condition or qualification outside the letter of credit, and that the beneficiary need only draw a sight draft under the letter and present the letter to obtain funds and that no other document need be presented. [1993, c. 313, §18 (AMD) .]

[2013, c. 238, Pt. B, §8 (AMD) .]

4. For purposes of this section, a "qualified United States financial institution" means an institution that:

A. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state of the United States; [1991, c. 828, §17 (AMD) .]

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and [1991, c. 828, §17 (AMD).]

C. Has been determined by the superintendent or the Securities Valuation Office of the National Association of Insurance Commissioners to meet standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the superintendent. [1991, c. 828, §17 (NEW).]

[1991, c. 828, §17 (AMD) .]

4-A. "Qualified United States financial institution" means for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust an institution that:

A. Is organized or in the case of a United States branch or agency office of a foreign banking organization licensed under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and [1991, c. 828, §18 (NEW).]

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies. [1993, c. 1, §56 (COR).]

[1993, c. 1, §56 (COR) .]

5. Credit is allowed as an asset or deduction from liability to any ceding insurer only for reinsurance ceded to an assuming insurer qualified under this section, except that no credit is allowed, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract or contracts reinsured by the assuming insurer on the basis of reported claims allowed by the court, without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary receiver unless the contract or other written agreement specifically provides another payee in the event of the insolvency of the ceding insurer or unless the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the reinsured policies and in substitution for the obligations of the ceding insurer to those payees.

The reinsurance agreement may condition the payments upon written notice by the ceding insurer's domiciliary receiver to the assuming insurer of the pendency of a claim on the contract reinsured within a reasonable time after the claim is filed in the proceeding where the claim is to be adjudicated. During the pendency of such a claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, any defenses in the proceeding that the assuming insurer determines available to the ceding insurer or to the ceding insurer's receiver. The expenses may be filed as a claim against the insolvent ceding insurer to the extent of its proportionate share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. When 2 or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

[2001, c. 47, §7 (AMD) .]

6.

[1999, c. 113, §21 (RP) .]

7. The superintendent may adopt rules, subject to Title 5, chapter 375, to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[2001, c. 47, §8 (AMD) .]

SECTION HISTORY

1989, c. 846, Pt. E, §§2, 4 (NEW). 1991, c. 38, (AMD). 1991, c. 828, §§16-18 (AMD). RR 1993, c. 1, §56 (COR). 1993, c. 313, §§17, 18 (AMD). 1993, c. 666, Pt. C, §1 (AMD). 1999, c. 113, §§19-21 (AMD). 2001, c. 47, §§2-8 (AMD). 2003, c. 249, §1 (AMD). 2007, c. 386, §1 (AMD). 2013, c. 238, Pt. B, §§3-8 (AMD).

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